

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

JAMES C. HILL,)	
)	
Plaintiff,)	
v.)	C.A. No. 05-cv-00452-JJF
)	
SUPER FRESH FOOD MARKETS, INC.,)	
)	
Defendant.)	

**DEFENDANT'S MOTION TO EXTEND TIME TO ANSWER,
RESPOND, OR OTHERWISE PLEAD TO PLAINTIFF'S COMPLAINT**

Defendant Super Fresh Food Markets, Inc. ("Super Fresh") hereby moves for an extension of time by which it must file and serve an answer, respond, or otherwise plead in response to Plaintiff's Complaint in the above-referenced action. In support of its motion, Defendant states the following:

1. On or around November 9, 2005, Plaintiff, who is proceeding *pro se*, filed a complaint against Defendant alleging a violation of Title VII of the Civil Rights Act of 1964.¹ (D.I. 2).
2. Plaintiff's Complaint alleges unlawful termination, but fails to specify a protected characteristic as the basis for such termination. (D.I. 2). In an attachment to the Complaint, Plaintiff also seems to assert a claim under the Americans with Disabilities Act ("ADA"). (D.I. 2, Attachment #1, at p. 2) (" . . . as a result of store management's indifference to the plaintiff's physical condition (tendonitis/carpal tunnel syndrome). . .").

¹Plaintiff filed a Motion for Leave to Proceed *in forma pauperis* on or around June 30, 2005 (D.I. 1), which was subsequently denied. (D.I. 3). Plaintiff subsequently submitted the filing fee and continues to proceed as a *pro se* plaintiff.

3. The undersigned was retained as local counsel in the above-referenced matter during the course of the week of November 28, 2005.

4. Defendants intend to fully defend the claims asserted in Plaintiff's Complaint.

5. Defendants have meritorious defenses, which they intend to assert. See U.S. v. \$55,518.05 in U.S. Currency, 728 F.2d 192, 195 (3d Cir. 1984) (a "meritorious defense" is one that makes allegations which, if established at trial, would constitute a complete defense to the action."). An extension will permit Defendant time to assert such defenses and, therefore, allowing Defendant to postpone the filing of its answer, or other response or pleading, until December 13, 2005, will serve the interests of justice and judicial economy by narrowing or eliminating certain issues.

6. For example, Plaintiff's Complaint fails to state a claim upon which relief can be granted. Plaintiff's Complaint asserts a Title VII action, but fails to allege any characteristic under which Plaintiff could avail himself to the protections of the Civil Rights Act. Additionally, Plaintiff's ADA claim, if deemed to be raised in the Complaint, is administratively barred because it was not asserted in his Charge of Discrimination filed with the EEOC.

7. Plaintiff will not be prejudiced by extending the time within which Defendant must answer, respond, or otherwise plead, since the matter has only recently been instituted and discovery has not yet begun.

8. In an attempt to reach agreement with Plaintiff, as the *pro se* opposing attorney, on the matters set forth in the Motion, corresponding counsel has made repeated attempts to contact Plaintiff at the contact numbers listed on Plaintiff's

Complaint. Defendant's counsel has left messages for Plaintiff at both his home and cell phone numbers. Defendant's counsel's phone messages have gone unreturned. As a result, Defendant's counsel has not been able to ascertain Plaintiff's position on the present Motion.

WHEREFORE, Defendant respectfully requests the Court to enter the proposed order attached.

YOUNG CONAWAY STARGATT & TAYLOR, LLP

/s/ Margaret M. DiBianca

William W. Bowser, Esquire (Bar I.D. 2239)

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Attorneys for Defendant Super Fresh Markets, Inc.

DATED: November 29, 2005

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Plaintiff,)	
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SUPER FRESH FOOD MARKETS, INC.,)	
)	
Defendant.)	

ORDER

Upon consideration of Defendant Super Fresh Food Markets, Inc.'s Motion to Extend Time in Which to Respond to Plaintiff's Complaint and the Local Rule 7.1.1 Statement in Support Thereof, it is by the Court this ____ day of _____, 2005:

ORDERED that Defendant's Motion **BE GRANTED**, and the same is hereby **GRANTED** in its entirety, and it is further

ORDERED that Defendant shall have until and including December 13, 2005, in which to respond to Plaintiff's Complaint.

United States District Judge

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CERTIFICATE OF SERVICE

I, William W. Bowser, Esquire, hereby certify that on November 29, 2005, I electronically filed a true and correct copy of the foregoing **Defendant's Motion to Extend Time to Answer, Respond, or Otherwise Plead to Plaintiff's Complaint and Form of Order** with the Clerk of the Court using CM/ECF. I further certify that on November 29, 2005, I served **Defendant's Motion to Extend Time to Answer, Respond, or Otherwise Plead to Plaintiff's Complaint and Form of Order** on the following non-registered participant via postage prepaid, First Class U.S. Mail:

James C. Hill
3 Mackenzie Drive
Newark, DE 19711-1505

YOUNG CONAWAY STARGATT & TAYLOR, LLP

/s/ Margaret M. DiBianca

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